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JOINT REPORT AND APPLICATION §  
OF ONCOR ELECTRIC DELIVERY §  
COMPANY LLC, AEP TEXAS INC., §  
AND LCRA TRANSMISSION §  
SERVICES CORPORATION TO §  
AMEND THEIR CERTIFICATES OF §  
CONVENIENCE AND NECESSITY §  
FOR 345-KV TRANSMISSION LINES §  
IN PECOS, REEVES, AND WARD §  
COUNTIES, TEXAS (SAND LAKE TO §  
SOLSTICE AND BAKERSFIELD TO §  
SOLSTICE) §

PUBLIC UTILITY COMMISSION

OF TEXAS

**OCCIDENTAL PERMIAN LTD., OXY DELAWARE BASIN, LLC, OXY USA INC, OXY  
USA WTP LP, HOUNDSTOOTH RESOURCES, LLC, AND OCCIDENTAL WEST  
TEXAS OVERTHRUST, INC.'S REPLY TO COMMISSION STAFF'S OBJECTIONS  
TO AND MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF  
ALBERT MENDOZA**

**I. INTRODUCTION**

Occidental Permian Ltd., Oxy Delaware Basin, LLC, Oxy USA Inc., Oxy USA WTP LP, Houndstooth Resources, LLC, and Occidental West Texas Overthrust, Inc. (collectively "Oxy") file this response to Commission Staff's (Staff's) objections to and motion to strike portions of the testimony filed by Oxy witness Albert Mendoza in both the Bakersfield to Solstice and Sand Lake to Solstice projects.

The Commission's rules require it to route transmission lines "to the extent reasonable to moderate the impact on the affected community and landowners."<sup>1</sup> As discussed in detail below, Mr. Mendoza's testimony is relevant because it informs the Commission about the impact that this line will have on Oxy's existing infrastructure and *ongoing*—as opposed to future—development activities within these study areas. Additionally, contrary to Staff's claims, Mr. Mendoza does not discuss the "appropriate compensation for right-of-way or condemnation of property," which is the only issue that the Commission indicated was not to be addressed in this

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<sup>1</sup> 16 TAC § 25.101(b)(3)(B).

proceeding.<sup>2</sup> Finally, Mr. Mendoza’s testimony about forced outages is not speculative because it is based on his personal knowledge and years of experience managing energy issues for Oxy. Accordingly, all of Staff’s objections should be overruled and no portion of Mr. Mendoza’s testimony should be struck.

## II. REPLIES TO STAFF’S OBJECTIONS

### A. Mr. Mendoza’s testimony is relevant.

Relevance is a low bar. Under the Texas Rules of Evidence, information is “relevant” if it has “*any* tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.”<sup>3</sup>

Staff claims that the potential impact that this line could have on Oxy’s ongoing development is not one of the routing factors under PURA § 37.056 or PUC Substantive Rule 25.101.<sup>4</sup> But while the impact on a particular landowner’s property or business is not explicitly listed as a factor in PURA § 37.056, that does not mean that evidence tending to prove such impacts is irrelevant. PURA § 37.056(c)(4) states that the Commission has expansive authority to consider “other factors” in coming to its decision with respect to a CCN application, and does not provide an exhaustive list of these factors.<sup>5</sup> This leaves the Commission free to consider the kind of impacts that are discussed in Mr. Mendoza’s testimony.

Additionally, Substantive Rule 25.101 *requires* the Commission to consider the impact that the line will have on individual landowners. Substantive Rule 25.101 states that “considering [PURA § 37.056(c)] . . . criteria, engineering constraints, and costs, *the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners.*”<sup>6</sup> Accordingly, testimony about the impact that a transmission line would have on Oxy, which is an affected landowner, is relevant to the Commission’s routing decision and should not be stricken.

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<sup>2</sup> See Docket No. 48785, Order of Referral and Preliminary Order at 6 (Nov. 14, 2018).

<sup>3</sup> Tex. R. Evid. 401 (emphasis added).

<sup>4</sup> Docket No. 48785. Commission Staff’s Objections To and Motion to Strike Portions of Intervenor Direct Testimony (Staff Objections) at 7-9 (Jan. 18, 2019).

<sup>5</sup> PURA § 37.056(c)(4) states that the Commission may consider “other factors, *such as:*” before listing a few examples. (emphasis added).

<sup>6</sup> Substantive Rule 25.101 (emphasis added).

- i) *Mr. Mendoza's testimony about the impact that a transmission line would have on Oxy's ongoing oil and gas development activities is relevant to the Commission's routing decision.*

The portions of Mr. Mendoza's testimony that describe the impact of routing a transmission line through Oxy's rapidly-expanding oil and gas fields are relevant because they show how various proposed routes would negatively impact an affected landowner.<sup>7</sup> Generally, oil and gas operators build out infrastructure on a rolling basis according to field development plans that are designed to maximize production from a given set of leases. Running a transmission line through an actively developing field will disrupt the execution of these pre-existing plans and prevent optimal development. Accordingly, testimony about Oxy's ongoing oil and gas development is relevant to show how the Commission's routing decision would impact an affected landowner.

Staff is incorrect to characterize Mr. Mendoza's statements as irrelevant "future use"<sup>8</sup> testimony because he is describing Oxy's current and *ongoing* development activities. For instance, at page 7, lines 1-7 of the Sand Lake to Solstice portion of Mr. Mendoza's testimony, he states that

Oxy has extensive exploration and production operations in the area and *development of those leases is ongoing*, especially along proposed links C2, D1, E1, F1, F2, F3, G1, G2, G3, G4, G51, G52, H2, I2, J1, and J3. Oxy is concerned that building a transmission line through or near its properties will impede this *ongoing development*, which would have a significant adverse economic impact.<sup>9</sup>

Mr. Mendoza is not discussing hypothetical future activities, but the on-the-ground reality within the study areas, which is that Oxy is actively working to expand its operations along various links. The only reason that the statements Staff objects to in Mr. Mendoza's testimony are forward-looking is that Oxy's fields are still in the construction phase. This is different from the

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<sup>7</sup> See Docket No. 48785, Direct Testimony of Albert Mendoza (Sand Lake to Solstice Portion – Routing Phase) ("Mendoza Sand Lake to Solstice Direct") at 6:3-4, 7:1-7, 7:26-8:12, 11:12-12:2, 12:9-10, 14:14-15:4, 15:8-10, 17:8-9, 18:8-14, 19:8-10, 20:7-8, 21:10-14, 22:7-8; Docket No. 48785, Direct Testimony of Albert Mendoza (Bakersfield to Solstice Portion – Routing Phase) ("Mendoza Bakersfield to Solstice Direct") at 5:5-6, 6:5-9, 6:28-7:14, 11:12, 11:15-17.

<sup>8</sup> See Staff Objections at 4-6 (Jan. 18, 2019).

<sup>9</sup> Mendoza Sand Lake to Solstice Direct at 7:1-7 (emphases added); *see also* Direct Testimony of Albert Mendoza (nearly identical language).

type of “future development” the Commission has excluded in the past, where a witness testified about speculative future development plans for his property and had no concrete plans, investment, or other evidence that these plans would be executed.<sup>10</sup> The Commission has held that mere assertions that a landowner *may* develop land at some unknown point in the future are irrelevant,<sup>11</sup> but more recent evidentiary rulings have held that it is appropriate to admit and consider testimony “when a party has taken steps towards a plan.”<sup>12</sup>

In prior transmission CCN cases, the Commission has admitted testimony about ongoing development that was proceeding in accordance with a pre-existing development plan. For instance, in Docket No. 48566, the Commission overruled Staff’s motion to strike the testimony of a home developer that described how a particular link would disrupt the ongoing construction of a pre-planned subdivision.<sup>13</sup> The testimony in question read:

Link G is routed through the property's north side and would bisect tracts for several single-family homes that are ***currently being developed***. This would significantly impact the development plan for Stewart Crossing by eliminating twelve available home sites.<sup>14</sup>

This ruling makes it clear that testimony about ***ongoing*** development is relevant to demonstrate the impact that routing a transmission line will have on a landowner’s ability to continue efficiently developing their land in accordance with existing, partially-executed plans. Additionally, Mr. Mendoza has submitted testimony about Oxy’s ongoing development activities

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<sup>10</sup> *Application of Oncor Electric Delivery Company, LLC to amend a Certificate of Convenience and Necessity for a Proposed Transmission Line Within Bell, Falls, Milam, and Robertson Counties*, Docket No. 36995, Proposal for Decision (PFD) at 23 (Apr. 22, 2010) (excluding testimony about landowner's intention to use water wells for pivot irrigation “at some point in the future” without any indication of a particular plan or investment in that plan).

<sup>11</sup> *See Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for a 138-KV Transmission Line in Kendal and Bexar Counties*, Docket No. 29684, Order on Rehearing at 4 (Mar. 22, 2006).

<sup>12</sup> Docket No. 36995, Proposal for Decision at 23 (explaining basis for decision; decision adopted by Commission).

<sup>13</sup> *See Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for the Round Rock to Leander 138-KV Transmission Line in Williamson County*, Docket No. 45866, SOAH Order No. 9 at 5 (Oct. 28, 2016).

<sup>14</sup> *See* Docket No. 45866, Direct Testimony of James Saunders at 5:22-6:2 (Sept. 12, 2016).

in four prior dockets,<sup>15</sup> and that testimony has never before been stricken. Accordingly, the Commission should overrule all of Staff's "future development" objections.

***ii) Mr. Mendoza's testimony about the potential financial impacts that this line could have on Oxy is relevant and does not stray into the sole issue that the Commission indicated was not to be addressed in this docket.***

Staff argues that the portions of Mr. Mendoza's testimony where he describes the financial impacts that these lines could have on Oxy are irrelevant because they discuss "potential diminution in property values."<sup>16</sup> However, Mr. Mendoza's testimony regarding the financial impacts of routing a transmission line across an actively expanding oil and gas operation is relevant to show the outsized impact that certain routes would impose on Oxy. First, Mr. Mendoza estimates the number of barrels of oil per day that would be lost if constructing these lines across Oxy's property caused it to shut in a single well, and uses that number to extrapolate the revenue that Oxy would lose.<sup>17</sup> He then references back to that testimony when explaining the negative financial consequences that certain proposed links on the Sand Lake to Solstice line would have for Oxy.<sup>18</sup> Finally, Mr. Mendoza describes, in general terms, the significant investment that Oxy has already made to develop a particular well site that would be disrupted by Link C2 on the Sand Lake to Solstice line.<sup>19</sup> This testimony is relevant because, as discussed above, it would be impossible for the Commission to determine which routing options would "moderate the impact on the affected community and landowners" without any evidence

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<sup>15</sup> See, e.g., *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line Within Hale, Hockley, Lubbock, Terry and Yoakum Counties (Tuco to Yoakum)*, Docket No. 46042, Direct Testimony and Exhibits of Joseph de Almeida at 6, 8-9 (Dec. 6, 2016) (following Mr. de Almeida's transfer to a different position within Oxy, Mr. Mendoza adopted his testimony on the stand); *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a 345/138-kV Transmission Line in Loving, Reeves, and Ward Counties (Riverton - Sand Lake)*, Docket No. 47368, Direct Testimony and Exhibits of Albert Mendoza at 5-9 (Dec. 22, 2017); *Joint Application of Oncor Electric Delivery Company LLC and Brazos Electric Power Cooperative, Inc. to Amend Certificates of Convenience and Necessity for the Cogdell to Clairemont 138-kV Transmission Line in Kent and Scurry Counties (Cogdell to Clairemont)*, Docket No. 47808, Direct Testimony and Exhibits of Albert Mendoza at 6-9 (May 1, 2018); *Application of Oncor Electric Delivery Company, LLC to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line in Crane, Ector, Loving, Reeves, Ward, and Winkler Counties (Odessa EHV - Riverton and Moss - Riverton CCN)*, Docket No. 48095, Direct Testimony and Exhibits of Albert Mendoza at 4, 8-9 (May 18, 2018).

<sup>16</sup> See Staff Objections at 4-6.

<sup>17</sup> See Mendoza Sand Lake to Solstice Direct at 7:26-8:12; Mendoza Bakersfield to Solstice Direct at 6:28-7:14.

<sup>18</sup> See Mendoza Sand Lake to Solstice Direct at 11:12-12:2, 14:14-15:4, 18:8-14, 21:10-14.

<sup>19</sup> See Mendoza Sand Lake to Solstice Direct at 9:12-10:5.

of how each route would affect the land that it crossed.<sup>20</sup> Therefore, Mr. Mendoza's general description of the financial impacts that this line would have on Oxy should not be struck because it reveals the disproportionate burden that this line would place on Oxy if it were built along certain paths. As discussed in Mr. Mendoza's testimony, all of the alternative routes proposed by the utilities impact Oxy properties. Oxy is willing to accept these lines along some of those properties, but is simply requesting that they only fall on those properties on which it can effectively mitigate the impact of a transmission line. Additionally, Mr. Mendoza's testimony is also relevant to show that condemning Oxy's mineral interest could substantially increase the cost of these lines, which is another factor that the Commission is required to consider under Substantive Rule 25.101(b)(3)(B).

Further, contrary to Staff's claims,<sup>21</sup> Mr. Mendoza does not attempt to prove up the value of Oxy's mineral rights for a prospective condemnation proceeding, which is the sole issue that the Commission has indicated is not to be addressed in this proceeding.<sup>22</sup> To the contrary, Mr. Mendoza's testimony simply illustrates the potential losses that Oxy could suffer if a transmission line disrupts its development, which is different than proving the appropriate level of compensation that Oxy would be entitled to in the future. As such, Mr. Mendoza is not asking the Commission to determine issues that are properly reserved for a condemnation proceeding, but instead merely illustrating the negative effect that this line would have on an affected landowner. Therefore, Staff's relevance objection should be overruled because Mr. Mendoza's testimony clearly has a tendency to make the existence of facts that are of consequence to the Commission's routing determination more or less probable.

**B. Mr. Mendoza's testimony about potential outages is based on his personal knowledge and experience, not speculation.**

Staff also asserts that two portions of Mr. Mendoza's testimony are speculative.<sup>23</sup> That objection should be overruled because Mr. Mendoza has substantial personal knowledge and experience regarding the impact that the construction and operation of a nearby transmission line

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<sup>20</sup> 16 TAC § 25.101(b)(3)(B).

<sup>21</sup> See Staff Objections at 7.

<sup>22</sup> See Staff Objections at 7; Order of Referral and Preliminary Order at 6.

<sup>23</sup> See Mendoza Sand Lake to Solstice Direct at 6:26-29; Mendoza Bakersfield to Solstice Direct at 5:26-6:2.

can have on active oil and gas operations, and his testimony is limited to issues within that personal knowledge. As stated in his testimony, Mr. Mendoza has been employed by Oxy for the past seven years, and has been a Manager, Energy at Occidental Energy Ventures Corporation for the past five.<sup>24</sup> As Manager in Oxy's Energy section, Mr. Mendoza is intimately involved in Oxy's diverse and expanding oil and gas operations, and works every day to manage those operations' electricity needs. Mr. Mendoza's deep involvement in this portion of Oxy's business places him in a position to know that Oxy has previously experienced utilities seeking to de-energize nearby transmission and distribution facilities during the transmission construction process, and often during maintenance once the line has been constructed, which is exactly what his testimony states. Further, Mr. Mendoza is clear that his testimony is based on his personal knowledge<sup>25</sup> because he begins his statement with the phrase, "[i]n Oxy's experience."<sup>26</sup> Accordingly, Mr. Mendoza is not speculating as to particular future outages, but explaining that, based on his personal knowledge of prior transmission projects, utilities often force such outages, which have negative consequences for Oxy's operations.

Mr. Mendoza has previously made exactly this kind of evaluation when analyzing the impact that a transmission line would have on Oxy's operations in four prior transmission routing cases in Texas,<sup>27</sup> Docket Nos. 46042,<sup>28</sup> 47368,<sup>29</sup> 47808,<sup>30</sup> and 48095,<sup>31</sup> and his testimony has never before been struck. Taken as a whole, Mr. Mendoza has the knowledge and experience to present testimony on the potential for the construction and operation of a transmission line to interfere with Oxy's electrical supply. As such, Staff's speculation objection should be overruled and no portion of Mr. Mendoza's testimony should be struck.

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<sup>24</sup> See Mendoza Sand Lake to Solstice Direct at 1:14-19.

<sup>25</sup> The Texas Rules of Evidence only require that non-expert witnesses testify within their personal knowledge. See Tex. R. Evid. 602.

<sup>26</sup> Mendoza Sand Lake to Solstice Direct at 6:26; Mendoza Bakersfield to Solstice Direct at 5:26.

<sup>27</sup> See Mendoza Sand Lake to Solstice Direct at 2.

<sup>28</sup> Docket No. 46042, Direct Testimony and Exhibits of Joseph de Almeida at 8 (Dec. 6, 2016) (following Mr. de Almeida's transfer to a different position within Oxy, Mr. Mendoza adopted his testimony on the stand).

<sup>29</sup> Docket No. 47368, Direct Testimony and Exhibits of Albert Mendoza at 6 (Dec. 22, 2017).

<sup>30</sup> Docket No. 47808, Direct Testimony and Exhibits of Albert Mendoza at 8 (May 1, 2018).

<sup>31</sup> Docket No. 48095, Direct Testimony and Exhibits of Albert Mendoza at 8 (May 18, 2018).

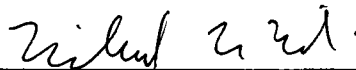


### III. CONCLUSION

For the foregoing reasons, Oxy requests that Staff's objections be overruled and that no portion of Mr. Mendoza's testimony be struck.

Respectfully submitted,

THOMPSON & KNIGHT LLP



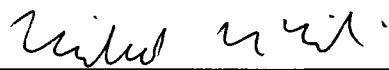
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AND OCCIDENTAL PETROLEUM, LTD.

### CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for Oxy, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 24<sup>th</sup> day of January, 2018<sup>9</sup> by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



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Michael McMillin